

**March 2000**

**MONTGOMERY COUNTY ETHICS COMMISSION**

**ADVISORY OPINION 2000-2**

A 15-year employee of a volunteer fire company, whose station is undergoing a major renovation and who is a member of the company's project management advisory committee, has asked the Commission whether there would be, under the provisions of the Montgomery County Public Ethics Law, "any actual or perceived conflicts of interest" if a small business in which he has an unspecified financial interest subcontracted with the prime contractor to provide fire-sprinkler-related work for the project. The employee stated, among other things, that he is not involved in the day-to-day operations of the company, but occasionally monitors the accounting work of its office manager in an effort to protect his financial interest.

**APPLICABLE LAW**

The Ethics Law applies to "any person employed by a County agency," which includes "each independent fire department or rescue squad that receives funds from the County or uses property owned by the County." § 19A-4 (a)(4) and (m)(2).

This request implicates §§19A-11(a), 19A-12(b), 19A-14(a), and 19A-15(a) of the Ethics Law. In pertinent part, these provisions are as follows:

1. § 19A-11(a). Unless permitted by a waiver, a public employee must not participate in:
  - (1) any matter that affects, in a manner distinct from its effect on the public generally, any . . .
  - (B) business in which the public employee has an economic interest. . .; or. . .
  - (2) any matter if the public employee knows or reasonably should know that any party to the matter is. . .
    - (A) any business in which the public employee has an economic interest or is an officer, director, trustee, partner, or employee.<sup>1</sup>

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<sup>1</sup> With certain exceptions that are not applicable to this request, "economic interest," means any source of income or any other legal or equitable economic interest, whether or not subject to an encumbrance or a condition, which is owned or held, in whole or in part, jointly or severally, directly or indirectly. § 19A-4(j). However, "(I)n this section, interest or economic interest only includes: (1) any source of income, direct or indirect, if the employee: (A) received more than \$1,000 from that source of income in any of the last 3 years; (B) is currently receiving more than \$1,000 per year from the source of income; or (C) is entitled to receive at least \$1,000 in any year in the future from that source of income; (2) a business in which the public employee owns more than 3 percent; (3) securities that represent ownership or can be converted into ownership of more than 3 percent of a business; and (4) any other economic interest worth more than \$1000. § 19A-11 (c).

2. 19A-12(b). Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

- (1) be employed by, or own more than one percent of, any business that:

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- (B) negotiates or contracts with the County agency with which the public employee is affiliated; or

- (2) hold any employment relationship that would impair the impartiality and independence of judgment of the public employee.

3. § 19A-14(a). A public employee must not intentionally use the prestige of office for private gain or the gain of another.
4. § 19A-15(a). Except when authorized by law, a public employee or former public employee must not disclose confidential information relating to or maintained by a County agency that is not available to the public. A public employee or former public employee must not use confidential information for personal gain or the gain of another.

### **Analysis & Advice**

- The Ethics Law clearly applies to the employee. § 19A-4 (a)(4) and (m)(2).
- The Ethics Commission will not waive any provision of the Ethics Law for the purpose of the proposed subcontract.
- If the employee's financial interest in his business equals or exceeds the thresholds set forth in § 19A-11(c) and the business enters into a subcontract for part of the work on this project, the project would become a matter that affects the business in a manner distinct from its effect on the public generally. As a result, the employee would no longer be able to participate, as a volunteer fire department employee, in the matter in any manner whatsoever, including, but not limited to, participation as a member of the project management advisory committee.
- Although § 19A-12(b) would prohibit the employee from being employed by, or owning more than one percent of, any business that negotiates or contracts with the County agency with which the public employee is affiliated, that provision does not apply to businesses that subcontract with a County contractor. Furthermore, a financial interest in a subcontractor does not constitute "an employment relationship" for the purposes of this section, and therefore, is not, for the purposes of this provision, an employment relationship that would impair the impartiality and independence of judgment of the public employee.

- The employee must not intentionally use the prestige of office to acquire the subcontract for his business or to assist the business or the prime contractor in the matter.
- If the subcontract is entered into, the employee must not, except when authorized by law, disclose confidential information relating to or maintained by the Fire and Rescue Service or his volunteer fire company that is not available to the public or use confidential information for personal gain or the gain of his business, the prime contractor, or any other entity.
- Although they are enforceable by the Ethics Commission only with respect to outside employment and not with regard to other outside financial interests, the employee should be aware of and may want to seek an advisory opinion from the Chief Administrative Officer regarding the “prohibited activities” provisions of the Montgomery County Fire and Rescue Corporation Personnel Regulations.<sup>2</sup>

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Kenneth C. Jackson, Sr., Chair

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<sup>2</sup> Section 1-11, entitled “Prohibited Activities,” provides: “No person whose compensation is paid in whole or in part from the County shall: (1) Act as an attorney, agent, broker, or employee for, or receive compensation or anything of value from, any person, firm or corporation transacting business of any kind with, or engaging in litigation against, the County or the fire and rescue service or any instrumentality thereof.” Section 1-3 provides for the CAO to interpret those regulations and authorizes any employee or corporation to request a written opinion from the CAO.